REPORT | FOURTH SESSION | THIRTY-NINTH PARLIAMENT

Special Committee to Appoint an Auditor General

LEGISLATIVE ASSEMBLY
PROVINCE OF BRITISH COLUMBIA

JANUARY 2013

January 23, 2013

To the Honourable
Legislative Assembly of the
Province of British Columbia

Honourable Members:

We have the honour to present herewith the Report of the Special Committee to Appoint an Auditor General containing our unanimous recommendations.

Respectfully submitted on behalf of the Committee,

Eric Foster, MLA
Chair

Kathy Corrigan, MLA
Deputy Chair

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Composition of the Committee

Members

Eric Foster, MLA	Chair	Vernon-Monashee
Kathy Corrigan, MLA	Deputy Chair	Burnaby-Deer Lake
Blair Lekstrom, MLA		Peace River South
John Les, MLA		Chilliwack
Bruce Ralston, MLA		Surrey-Whalley

Clerk to the Committee

Kate Ryan-Lloyd, Deputy Clerk and Clerk of Committees

Terms of Reference

On May 29, 2012, the Legislative Assembly agreed that, notwithstanding the motion adopted on October 3, 2011 regarding the Select Standing Committee on Public Accounts, a Special Committee be appointed to unanimously recommend to the Legislative Assembly the appointment of an Auditor General, pursuant to section 2 of the *Auditor General Act* (S.B.C. 2003, c.2). The said Special Committee shall have the powers of a Select Standing Committee and in addition is empowered:

1. to appoint of their number, one or more subcommittees and to refer to such subcommittees any of the matters referred to the Committee;

2. to sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;

3. to adjourn from place to place as may be convenient; and

4. to retain such personnel as required to assist the Committee;

and shall report to the House as soon as possible, or following any adjournment, or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.

Introduction

The Auditor General of British Columbia is an independent officer of the Legislature with the responsiblity to help legislators hold the government accountable. Through audit opinions, the Auditor General gives MLAs audit assessments about the fairness and reliability of the financial statements and public accounts of the government. The Auditor General also assesses the operations and performance of the government's programs and services.

Since the creation of the office in 1977, the province has had four legislative auditors with term appointments: Erma Morrison, George Morfitt, Wayne Strelioff, and John Doyle. Each was appointed by the Legislative Assembly on the unanimous recommendation of an all-party parliamentary committee. The appointment of the current Auditor General, John Doyle, was ratified by the House on May 28, 2007.

Search Process

On May 29, 2012, the Special Committee to Appoint an Auditor General was struck. It held four meetings (May 30, August 13, October 29, and November 26) to plan the search process.

Under section 2(5)(a) of the *Auditor General Act*, the incumbent Auditor General is required to notify the committee at least six months before the end of the first six-year term that he or she wishes to be considered for reappointment. Following notification by John Doyle of his interest in serving a further term, on December 17, 2012, the Special Committee interviewed Mr. Doyle and considered his reappointment to a second term as Auditor General. The outcome of that meeting was that Members agreed, on division, to conduct an open competition.

Advertisements inviting applications for the position of Auditor General were placed in major daily newspapers within British Columbia, as well as in the *Globe and Mail* and *National Post*, beginning January 5, 2013. Their placement prompted considerable public interest.

In response, the Committee met on January 16, 18 and 23 to review its decision, and agreed to unanimously recommend to the Legislative Assembly the appointment of John Doyle to a second term as BC's Auditor General, ending on October 31, 2015, pursuant to Section 2(5) of the *Auditor General Act*.

Recommendation

The Committee unanimously recommends to the Legislative Assembly that John Doyle, MAcc, CA be appointed to a second term as Auditor General of British Columbia, ending on October 31, 2015, pursuant to section 2(5) of the *Auditor General Act*.

Appendix A: *Auditor General Act* [SBC 2003] Chapter 2

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DEFINITIONS

1 (1) In this Act:

"audit" means an audit conducted in accordance with generally accepted auditing and assurance standards;

"Auditor General" means the Auditor General appointed under section 2;

"committee" means the committee of the Legislative Assembly that the Legislative Assembly has specified for the purpose;

"government" means the government as reported through the consolidated revenue fund;

"organization" means a corporation or an unincorporated body;

"trust fund" means a fund held in trust by

(a) the government,

(b) a minister, or

(c) a government organization.

(2) To the extent that this Act does not otherwise define a word or expression used in this Act,

(a) the definitions in the *Budget Transparency and Accountability Act* apply, and

(b) the definitions in the *Financial Administration Act* apply if those definitions are made to apply to the *Budget Transparency and Accountability Act* in accordance with section 1 (2) of that Act.

APPOINTMENT OF AUDITOR GENERAL

2 (1) The Auditor General and an acting Auditor General are officers of the Legislature.

(2) The Legislative Assembly, by resolution, may appoint a person to be the Auditor General.

(3) An Auditor General holds office

(a) on being appointed to a first term, for 6 years, and

(b) if appointed for a second term, for a period of up to 6 years as specified in the reappointment resolution.

(4) The Legislative Assembly must not appoint a person under subsection (2) who has not previously been appointed Auditor General, unless the committee unanimously recommends the appointment of the person.

(5) The Legislative Assembly must not appoint an Auditor General for a second term under subsection (2) unless

(a) the Auditor General notifies the committee at least 6 months before the end of the first term that he or she wishes to be considered for reappointment, and

(b) the committee unanimously recommends the reappointment within 60 days of being notified by the Auditor General under paragraph (a).

(6) A person must not be appointed under subsection (2) for a third or subsequent term.

OATH OF OFFICE

3 Before assuming office, the Auditor General or acting Auditor General must take an oath before the Clerk of the Legislative Assembly to exercise the powers and perform the duties of the Auditor General faithfully and impartially.

REMUNERATION AND EXPENSES

4 (1) The Auditor General must be paid out of the consolidated revenue fund a salary equal to that of the chief judge of the Provincial Court of British Columbia.

(2) The Auditor General must be reimbursed for reasonable travelling and out of pocket expenses necessary to exercise the powers and perform the duties of the Auditor General.

APPLICATION OF *PUBLIC SECTOR PENSION PLANS ACT*

5 (1) The public service plan as defined in section 1 of the *Public Sector Pension Plans Act* applies to the Auditor General.

(2) To calculate the amount of a pension under the public service plan for the Auditor General holding that office on the coming into force of this Act,

(a) each year of service as Auditor General must be counted as 1 1/2 years of pensionable service, and

(b) paragraph (a) does not apply to a year of service as Auditor General served after the end of the term as Auditor General that was being served on the coming into force of this Act.

RESIGNATION, REMOVAL OR SUSPENSION OF AUDITOR GENERAL

6 (1) The Auditor General may resign from office at any time by giving written notice

(a) to the Speaker of the Legislative Assembly, or

(b) if the Speaker is absent from British Columbia or there is no Speaker, to the Clerk of the Legislative Assembly.

(2) By a resolution passed by 2/3 or more of the members present in the Legislative Assembly, the Auditor General, for cause or incapacity, may be suspended from office, with or without salary, or removed from office.

(3) If the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the committee may suspend, by unanimous resolution, the Auditor General for cause or incapacity, with or without salary, for a period that must be set by the committee to end not later than on the expiry of a further 20 sitting days of the Legislative Assembly.

APPOINTMENT OF ACTING AUDITOR GENERAL

7 (1) If the Auditor General is suspended or the office is vacant, the Legislative Assembly, on the recommendation of the committee, may appoint an acting Auditor General to exercise the powers and perform the duties of the Auditor General until an appointment is made under section 2 or the suspension ends.

(2) If the Auditor General is suspended or the office is vacant, and if the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the committee may appoint an acting Auditor General to exercise the powers and perform the duties of the Auditor General

(a) if the Auditor General is suspended under section 6 (2), until the suspension ends,

(b) if the Auditor General is suspended under section 6 (3), for the period set by the committee under that subsection, or

(c) if the office of Auditor General is vacant, until an appointment is made under section 2.

STAFF

8 (1) The Auditor General may appoint, in accordance with the *Public Service Act*, a deputy Auditor General and the other employees necessary for the exercise of the powers and the performance of the duties of the Auditor General.

(2) The Auditor General may engage and set the remuneration for the persons, in capacities other than as employees, that the Auditor General considers necessary for the exercise of the powers and the performance of the duties of the Auditor General.

(3) For purposes of the application of the *Public Service Act* to this section, the Auditor General is a deputy minister.

CONFIDENTIALITY

9 The Auditor General, or a person appointed or engaged under section 8, must keep in confidence all information obtained in the exercise of a power or in the performance of a duty of the Auditor General and must not communicate this information to any person except

(a) in the course of the administration of an enactment, or

(b) in court proceedings.

AUDITOR APPOINTMENT

10 (1) The Auditor General is the auditor of the government reporting entity.

(2) The Auditor General is the auditor of each

(a) ministry,

(b) office administered by

(i) an officer of the Legislature, or

(ii) the person appointed commissioner under section 14 of the *Members' Conflict of Interest Act*, and

(c) fund or appropriation that is part of the consolidated revenue fund.

(3) The auditor for a government organization or a trust fund is,

(a) if the Auditor General has elected to be the auditor in accordance with subsection (4), the Auditor General during the fiscal years covered under that subsection, or

(b) if the Auditor General has not elected to be the auditor in accordance with subsection (4), the auditor appointed in accordance with the plan approved under subsection (9).

(4) The Auditor General may elect to be the auditor of a government organization or a trust fund for any of the first 3 fiscal years of the government organization or a trust fund.

(5) Except as provided in the plan approved under subsection (9), the Auditor General must not be appointed as auditor of a government organization or a trust fund for a period of more than 5 consecutive fiscal years of the government organization or trust fund.

(6) The Auditor General must provide to the committee during each fiscal year of the government a plan for the appointment of auditors for government organizations and trust funds for the following 3 fiscal years of the government.

(7) A plan provided to the committee under subsection (6) must include the following information:

(a) a list of the government organizations and trust funds for which the Auditor General proposes that the Auditor General be appointed;

(b) a list of the government organizations and trust funds for which the Auditor General proposes that other auditors be appointed;

(c) the implications of the plan on the budget of the Auditor General;

(d) a request for exemption from the prohibition in subsection (5) against being appointed auditor of a government organization or a trust fund for a period of more than 5 consecutive fiscal years of the government organization or a trust fund;

(e) the criteria and selection process for the appointment of the auditors of government organizations and trust funds;

(f) the involvement of the Auditor General in the audit process for government organizations and trust funds, for which auditors other than the Auditor General are the auditors;

(g) a summary of consultations in respect of the plan, with officials of those government organizations and trust funds referred to in paragraph (b).

(8) Together with the plan under subsection (6), the Auditor General may provide the committee with an assessment of the financial statement audit process for all government organizations and trust funds.

(9) The committee must approve the plan, including any amendments the committee makes to the plan before giving its approval.

(10) The Auditor General must administer the auditor appointment process in accordance with the plan approved under subsection (9).

(11) If a government organization or trust fund appoints an auditor, or is required under its constitution, articles, bylaws or trust instrument to appoint an auditor, or if an auditor is appointed for it under another enactment, the appointment or requirement to appoint under the constitution,

articles, bylaws, trust instrument or other enactment does not apply if the plan approved under subsection (9) provides for the appointment of a different auditor.

(12) In this section, except in subsection (2), ***"auditor"*** means an auditor of financial statements.

MANDATE

11 (1) The Auditor General must report each year, in accordance with generally accepted auditing and assurance standards, to the Legislative Assembly on the financial statements of the government reporting entity.

(2) The report under subsection (1) must state whether these financial statements are presented fairly in accordance with generally accepted accounting principles.

(3) The auditor in accordance with section 10 (3) must report each year on the financial statements of the government organizations and of the trust funds, in accordance with generally accepted auditing and assurance standards, to

(a) the boards of management of the government organizations and the trustees of the trust funds to which the appointment is made, and

(b) the minister responsible.

(4) An auditor of a government organization or a trust fund must audit the government organization or a trust fund as the Auditor General considers advisable to enable the Auditor General to exercise the powers and perform the duties of the Auditor General.

(5) For the purposes of subsection (4), the Auditor General may conduct or cause to be conducted any further examinations that the Auditor General considers advisable.

(6) The Auditor General may audit an individual or organization in relation to

(a) a grant, a transfer under an agreement, an advance of money, a loan, a guarantee for the performance of an obligation, or an indemnity given by, or

(b) the collection of money for or on behalf of, the government, a government organization or a trust fund.

(7) An audit under subsection (6) must be limited to whether any terms and conditions applicable in respect of

(a) a grant, a transfer under an agreement, an advance of money, a loan, a guarantee for the performance of an obligation, or an indemnity given by the government, government organization or a trust fund, or

(b) the collection referred to in subsection (6) (b) have been fulfilled.

(8) The Auditor General must report to the Legislative Assembly one or more times each fiscal year of the government and call attention to anything resulting from the work undertaken to exercise the powers and perform the duties of the Auditor General that the Auditor General considers should be brought to the attention of the Legislative Assembly, including any assessments concerning whether

(a) financial and administrative provisions of Acts and regulations under those Acts have been complied with,

(b) the government, a government organization or a trust fund is operating economically, efficiently and effectively,

(c) the procedures established by the government, government organizations or trust funds to measure and report on the effectiveness of their programs are adequate and complied with,

(d) the accountability information provided to the Legislative Assembly by the government, government organizations and trust funds with respect to the results of their programs is adequate,

(e) the terms and conditions applied in respect of a grant, a transfer under an agreement, an advance of money, a loan, a guarantee for the performance of an obligation, or an indemnity given by the government, a government organization or a trust fund to any individual or another organization have been complied with, and

(f) the terms and conditions applied in respect of a collection of money on behalf of the government, a government organization or by or on behalf of a trust fund have been complied with.

(9) A report under subsection (8) or section 12 or an examination under section 13 must not call into question the merits of program policies or objectives of the government, a government organization or a trust fund.

(10) A report under subsection (8) must

(a) be transmitted by the Auditor General to the Speaker,

(b) if the Legislative Assembly is sitting or is scheduled to sit within 5 days of the Speaker receiving the report, be laid by the Speaker before the Legislative Assembly as soon as possible,

(c) if the Legislative Assembly is not sitting and is not scheduled to sit within 5 days of the Speaker receiving the report, be forwarded by the Speaker to all members of the Legislative Assembly as soon as possible and released to the public, and

(d) be referred by the Legislative Assembly to the Select Standing Committee on Public Accounts as soon as possible.

(11) The Auditor General must transmit a report issued under subsection (1) to the Minister of Finance at least 7 days before the report is transmitted to the Speaker of the Legislative Assembly.

(12) The Auditor General must transmit a report issued under subsection (8) to the ministry responsible for the administration of the matter included in the report at least 7 days before that report is transmitted to the Speaker of the Legislative Assembly.

OTHER REPORTS

12 The Auditor General may make a report at any time to the Legislative Assembly, a minister, the Treasury Board, the Executive Council or an officer or employee of the government or of a government organization that, in the opinion of the Auditor General, should be made to that person or organization.

OTHER EXAMINATIONS

13 (1) The Auditor General may undertake an examination

(a) respecting the government, a government organization or a trust fund, or

(b) in relation to a grant, a transfer under an agreement, an advance of money, a loan, a guarantee for the performance of an obligation, or an indemnity given by the government, a government organization or a trust fund.

(2) An examination must be undertaken under subsection (1) on a request by the Legislative Assembly or a committee.

(3) An examination may be undertaken under subsection (1) on the request of a person or an organization other than the Legislative Assembly or a committee if the Auditor General is satisfied that

(a) it is in the public interest to undertake the examination, and

(b) the undertaking of the examination will not interfere with the discharge of the responsibilities of the Auditor General.

(4) A summary of the findings of the Auditor General resulting from examinations undertaken under subsection (1) must be reported each year to the Legislative Assembly.

AUDITING OUTSIDE THE GOVERNMENT REPORTING ENTITY

14 The Auditor General, with the prior consent of the committee, may agree to be appointed, for a term specified by the committee, as the auditor of an organization other than a government organization or a trust fund.

STAFF IN GOVERNMENT OR GOVERNMENT ORGANIZATIONS

15 (1) The Auditor General may place a person appointed or engaged under section 8 in any part of the government or of a government organization to assist the Auditor General to exercise the powers and perform the duties of the Auditor General.

(2) If a person is placed, under subsection (1), in a part of the government or a government organization, office accommodation in the part must be provided for that person by the managers of that part.

(3) Each person employed with the Auditor General who is to examine the accounts or the administration of the government or of a government organization under this Act must comply with security requirements applicable to persons employed in the government or the government organization.

ACCESS TO INFORMATION, DOCUMENTS OR THINGS

16 Despite any other enactment, the Auditor General, in the conduct of the Auditor General's duties, must be given access to records, information and any explanations required from a person or organization for the Auditor General to exercise the powers and perform duties of the Auditor General.

SUMMONS AND REQUESTS

17 (1) The Auditor General may

(a) summons the attendance of witnesses,

(b) request that witnesses give evidence on oath or in any other manner, and

(c) request that witnesses produce records, securities and things for the purposes of section 11 or of an examination undertaken under section 13.

(2) A witness is liable, on application to the Supreme Court by the Auditor General, to be committed for contempt as if in breach of an order or judgment of the Supreme Court if the witness

(a) is summonsed as described in subsection (1) (a), and

(b) fails or refuses to attend or to take an oath described in subsection (1) (b).

(3) If a witness receives

(a) a request described in subsection (1) (b) and fails or refuses to give evidence as requested, or

(b) a request described in subsection (1) (c) and fails or refuses to produce records, securities and things in the witness's custody or possession as requested, the Auditor General may apply to the Supreme Court for an order that the witness comply with the request.

PROTECTION AGAINST LAWSUITS

18 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against the Auditor General or a person appointed or engaged under section 8 because of anything done or omitted in

(a) the exercise or intended exercise of any power of the Auditor General, or

(b) the performance or intended performance of any duty of the Auditor General.

(2) Subsection (1) does not apply to a person in relation to anything done or omitted in bad faith.

(3) Subsection (1) does not absolve the Government of the Province of British Columbia from vicarious liability arising out of anything done or omitted by a person referred to in that subsection for which the Government of the Province of British Columbia would be vicariously liable if this section were not in force.

(4) The Government of the Province of British Columbia must indemnify any person referred to in subsection (1) for any costs or expenses incurred by the person in any legal proceedings taken against the person for anything done or not done in good faith as described in subsection (1) (a) or (b).

PREPARATION OF ESTIMATES FOR APPROPRIATION PURPOSES

19 (1) For each fiscal year, the Auditor General must present to the committee

(a) a service plan that includes a statement of goals and identifies specific objectives and performance measures that will be required, and

(b) an estimate of the resources, stated in a form suitable for inclusion in the main estimates that will be required,to exercise the powers and perform the duties of the Auditor General during the upcoming fiscal year.

(2) The committee must review and may adjust as it considers appropriate the estimate it receives under subsection (1) (b) and must transmit the resulting estimate to the Minister of Finance.

(3) The estimate transmitted under subsection (2) is deemed to be recommended by the committee and must be included by the Minister of Finance as part of the main estimates for the upcoming fiscal year submitted to the Lieutenant Governor for recommendation to the Legislative Assembly.

(4) Notice of meetings of the committee for the purposes of subsection (2) must be given to the Auditor General and to the chair of Treasury Board.

FEES

20 (1) The Auditor General may charge fees, on a basis approved by the committee, for services performed on behalf of the Auditor General.

(2) If a vote described in section 23 (3) of the Financial Administration Act providing for the expenses of the Auditor General contains a recovery for fees collected under subsection (1) of this section, the reference in section 23 (3) (c) of the *Financial Administration Act* to the Treasury Board is deemed to be a reference to the committee for the purpose of approving the expenditure by the Auditor General of amounts collected as fees described by subsection (1).

(3) Subsection (2) applies despite the *Financial Administration Act*.

FINANCIAL ADMINISTRATION ACT AND *PUBLIC SERVICE ACT*

21 (1) The committee may recommend to Treasury Board that a regulation, an order or a directive made under the *Financial Administration Act* be made inapplicable to, or be varied in respect of, the Auditor General.

(2) The committee may recommend to the minister responsible for the administration of the *Public Service Act* that the *Public Service Act*, or a regulation or an order made under that Act be made inapplicable to, or be varied in respect of, the Auditor General.

ACCOUNTABILITY OF AUDITOR GENERAL

22 (1) The Auditor General must report each year before June 30 to the Legislative Assembly on the attainment of the goals and the specific objectives and performance measures of the Auditor General set out in the statement referred to in section 19 (1) (a), and this report must include financial statements for the Auditor General prepared in accordance with generally accepted accounting principles.

(2) A report under subsection (1) must compare actual results for the preceding fiscal year with the expected results identified in the service plan for the Auditor General for that fiscal year.
(3) The Auditor General must deliver a report described in subsection (1) to the Speaker and the Speaker must lay the report before the Legislative Assembly as soon as possible.

AUDIT OF ACCOUNTS OF AUDITOR GENERAL

23 (1) The committee must appoint an independent auditor to audit the financial statements of the Auditor General for each of the remaining fiscal years of the Thirty-seventh Parliament of British Columbia.

(2) During the First Session of the Thirty-eighth Parliament of British Columbia, and during the First Session of each Parliament of British Columbia thereafter, the committee must appoint an independent auditor to audit the financial statements of the Auditor General for each of the fiscal years to be completed during the term of the Parliament.
(3) On completing an audit under subsection (1) or (2) for a fiscal year, an auditor must submit a report on the results of the audit to the Auditor General.
(4) An auditor appointed under subsection (1) or (2) may also audit the appropriateness and reliability of the performance information contained in the annual report of the Auditor General.
(5) The report under subsection (3) must be included in the report under section 22.

SPENT

24–44 [Consequential amendments and repeal. Spent. 2003-2-24 to 44.]

COMMENCEMENT

45 This Act comes into force by regulation of the Lieutenant Governor in Council.